



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## INDIAN LEGISLATION IN PERU

Readers of *THE HISPANIC AMERICAN HISTORICAL REVIEW* may remember my article on "Race and Society in the Andean Countries."<sup>1</sup> In that article an effort was made to point out the salient aspects of the inter-racial situation in Peru.

The object of the present article is that of taking up the theme where the other left it and showing what measures are being contemplated and carried out to relieve the inter-racial problems of Peru.

### INDIAN LEGISLATION IN THE PAST

Efforts were constantly made by the Spanish Government during the colonial period to ensure the welfare of the Indians. But these efforts partook solely and simply of the nature of tutelage; no means of ascertaining the desires of the Indians, and no realization that their desires were of any importance, existed. They were treated exactly as children are now, it being assumed that they were not merely anthropologically, but likewise spiritually and intellectually, inferior to the Spaniards and mestizos.

In order to find the foundations of Indian legislation in Peru one must seek far back in the past. Sarmiento de Gamboa in speaking of pre-Inca times in Peru says:

. . . It may be assumed that, although the land was peopled and full of inhabitants before the Incas, it had no regular government, nor did it have natural lords elected by common consent to govern and rule, and who were respected by the people, so that they were obeyed and received tribute. On the contrary all the people were scattered and disorganized, living in complete liberty, and each man being sole lord of his house and estate. . . .

As there were dissensions among them, a certain kind of militia was organized for defence, in the following way. When it became known

<sup>1</sup> See I. no. 4, November, 1918, p. 415.

to the people of one district that some from other parts were coming to make war, they chose one who was a native, or he might be a stranger, who was known to be a valiant warrior. . . . Such a man was followed and his orders were obeyed during the war. When the war was over he became a private man as he had been before, like the rest of the people, nor did they pay him tribute either before or afterwards, nor any manner of tax whatever. To such a man they gave and still give the name of Sinchi which means valiant. . . .<sup>2</sup>

In other words, Sarmiento is of the opinion that the pre-Incaic state of Peru was one resembling that which existed in parts of Spain in the days of the *behetriás*. A contrast exists, of course, in the fact that the lord of a *behetria de linaje* had to elect its lord from a given family. Like the Peruvian *behetria* (Sarmiento uses that word) the *behetria de mar a mar* of the Basque provinces could elect any man as lord.<sup>3</sup> The *behetriás* in Spain lasted down to 1370, when the *behetriás* came to be absorbed in the crown of Castile which was represented among them by officers called *corregidores*, who enforced the royal authority and collected revenues due to the crown. Thus it is seen that the *behetriás* in Spain were transformed in the course of a few generations from free communities of hardy pioneers who agreed to dwell in dangerous territories, perhaps recently reconquered from the Moors, on consideration of being allowed a great degree of local autonomy, into mere vassals of the crown of Castile.

A close parallel between the history of the Spanish *behetriás* and that of the Peruvian ones lies in the fact that both present the spectacle of democracies forced gradually to yield their powers to a strong central authority which established its own officers among them.

As a matter of fact, the Peruvian *behetriás* were exceedingly interesting institutions. They were communities which may be regarded as broken fragments of the Tiahuanaco civilization

<sup>2</sup> Pedro Sarmiento de Gamboa, *The History of the Incas*, London, Hakluyt Society, 1907, pp. 37-38. This is the edition by Sir Clements Markham. Sarmiento wrote about 1572.

<sup>3</sup> Charles E. Chapman, *A History of Spain*, New York, Macmillan, 1918, pp. 197-199; Roger Bigelow Merriman, *The Rise of the Spanish Empire*, 2 vols., New York, Macmillan, 1918, I. 180-183.

(which died out about 900 A.D.). Though their material culture varied considerably from one district to another, it was in general much lower than that of Tiahuanaco had been.

The basis of the *behetria*, better known under the name of *ayllu* (gens) or, in modern times, *comunidad*, which words we shall employ from now on, was agriculture. It was a social organism characterized by coöperative labor for raising crops and by a real or pretended blood-relationship among the members.

This social unit was taken over bodily by the Incas. Indeed, they themselves had once been merely one *ayllu* among hundreds of others. But about 1100 they began to superimpose their rule upon the neighboring *ayllus* and so to create a confederacy which rapidly increased in strength and pride. The internal organization of the *ayllus* thus absorbed was not, generally, much interfered with by the Incas, but they did establish officers of their own in each *ayllu* to enforce royal authority and to collect tribute (compare this with the Spanish corregidores). Thus, a dual social organization grew up: the autonomous *ayllus*, each with its own government, and the Inca empire which had its very strong bonds linking the central government to every *ayllu*, but not linking one *ayllu* to its neighbors. There was probably very little contact between one *ayllu* and those around it, but all were in constant communication with the Inca at Cuzco.<sup>4</sup>

Such, in very brief outline, was the social organization which the Spaniards found in Peru at the time of the Conquest. Without going into too much detail it can be said that between 1531, when Francisco Pizarro began the conquest of Peru, and 1569, when Francisco de Toledo arrived in that country as viceroy,

<sup>4</sup> The chief works on this subject are the following: Victor Andrés Belaunde, *El Peru antiguo y los modernos Sociólogos*, Lima, 1908, pp. 50 *et seq.*; Lino Cornejo, *Estudios Jurídicos*, Lima, 1916, pp. 29-34; Heinrich Cunow, *Die soziale Verfassung des Inkareichs*, Brunswick, 1898; Sir Clements R. Markham, *The Incas of Peru*, London, 1910, pp. 159-172; Philip Ainsworth Means, *Racial Factors in Democracy*, Boston, 1918, pp. 118-121; José Manuel Osorio, *El Medio y la Legislación*, Lima, 1918, pp. 23 *et seq.*; José de la Riva-Agüero y Osma, *La Historia en el Perú*, Lima, 1910, pp. 61-162; Juan Bautista Saavedra, *El Ayllu*, La Paz, 1909; Francisco Tudela y Varela, *Socialismo Peruano*, Lima, 1905; César Antonio Ugarte, *Los Antecedentes históricos del regimen agrario Peruano*, Lima, 1918, pp. 10-43.

there was a period in which a fusion took place between indigenous social institutions and Spanish social institutions.

In considering the development of the Spanish régime in its final form (the work of Toledo) one must distinguish with care between the official attitude of the crown of Castile towards its new subjects and the manner in which the royal laws were executed by the various grades of crown officers.

The American colonies of Spain were but so many appanages of the crown of Castile, and the Indians there were but so many vassals of the king of Castile. This arrangement had been established in the earliest days of colonization of the West Indies and of Mexico.<sup>5</sup>

Consequently, it is not greatly to be wondered at that the crown should have striven to maintain a benignant attitude toward the indigenes of Peru and other American colonies. It is unnecessary to say much here regarding the efforts of Fray Bartolomé de las Casas to ameliorate the conditions of the Indians. He found that the first conquerors and settlers in the various Spanish possessions had practically reduced the Indians to slavery, and moved by a noble compassion he prepared to write a number of works relating the miseries which the indigenous vassals of the crown were suffering in America. These works were finally published.<sup>6</sup>

Part of the result of las Casas' long-continued efforts was the passing of the New Laws in 1542. They provided that:

1. After the death of the conquerors, the repartimientos of Indians, given to them in encomienda, were not to pass to their heirs, but were to be placed under the king. All officers of the crown were to renounce their repartimientos forthwith.

<sup>5</sup> Miguel Blanco Herrero, *Política de España en Ultramar*, Madrid, 1888, pp. 18-23; Prudencio de Sandoval, *Historia de la Vida y Hechos del Emperador Carlos V.*, 2 vols., Pamplona, 1634, I. 166.

<sup>6</sup> Bartolome de las Casas, *Brevissima Relacion de la Destruccion de las Indias*, printed by Sebastian Trugillo en Sevilla, 1552; and *Tratado cōprobatorio de Imperio Soberano y Principado Vniuersal que los Reyes de Castilla y Leon tienen sobre las Indias*, 1552 (Jacobo Cromberger finished printing this work at Seville, August 16, 1552, as related in the colophon of the copy existing in the library of the University of San Marcos, Lima).

2. All encomenderos in Peru who had taken part in the wars between the Pizarro and the Almagro factions were to be deprived of their encomiendas.

3. The natives were freed from personal service and the encomenderos were left in the enjoyment of a moderate tribute only.

Blasco Nuñez Vela, the first viceroy of Peru, arrived in that country early in March, 1544, charged with the enforcement of these laws. He entered formally upon the exercise of his office on July 2, 1544. Naturally, he found all the "solid citizens" of Peru up in arms against him, for they saw themselves menaced with utter ruin. The viceroy's own hasty and tactless disposition hastened his end. The royal *audiencia* of Lima at length deposed him from office, and recognized Gonzalo Pizarro as governor of Peru. Nuñez Vela was killed after the battle of Añaquito in 1546, a victory for Gonzalo.

From that time until the coming of Toledo very little Indian legislation was accomplished save the final repeal of the New Laws, which constituted a surrender on the part of the crown to the rapacity of its Christian vassals in the colonies.

This, then, is good place to note a few of the features of the government of the viceroyalty of Peru.

The said viceroyalty was of the first class. It was presided over by a viceroy appointed by the crown. He ruled in conjunction with a pretorial royal *audiencia* consisting of four civil and four criminal judges who functioned under the presidency of the viceroy. The royal *audiencia* of Lima was founded in 1542 by Charles V. and modified somewhat by Philip II. in 1569. The royal *audiencia* of Quito was established in 1564 by Philip II. being of the second class and functioning under the presidency of a governor and captain-general.<sup>7</sup> Beneath these high officers came the *corregidores*, each in charge of a *corregimiento* for the revenue of which he was responsible. Thus it came about that the *corregidor* came to be the chief instrument of oppression and the chief object of hatred among the indigenes.

<sup>7</sup> Enrique Ruiz Guiñazu, *La Magistratura Indiana*, Buenos Aires, 1916, pp. 127-145.

In the towns of the Spaniards (and all towns not exclusively Indian were regarded as Spanish) there were *alcaldes* and other municipal officers. They were elected by all the free-holders convoked in *cabildo* on January 1 of each year. They served as judges of first instance, and appeals from them went directly to the *audiencia*.<sup>8</sup>

These officials, and a number of others to whom specific reference has not been made, constituted the major government or *gobernación mayor* of the colony. The antecedents of the major government were almost entirely Spanish. On the other hand, there was, as will presently appear, a minor government chiefly of indigenous origin.

Important though it is, the Indian legislation of Viceroy Toledo (1569–1581) cannot be fully described here. Most of it refers to the tribute and the other obligations which the Indians were obliged to meet. He did take some constructive measures, however, though they proved of doubtful value. For one thing, he established Indian towns which were organized like Spanish ones save that the voters and the *alcaldes* were all christianized Indians.

But the chief feature of Toledo's administration was the degree to which he made use of the fragments of the Inca governmental organization. For example, the *yanaconas* (domestic servants) of Inca days were used under Toledo for precisely the same purposes as formerly. But whereas, under their old masters, they had been well treated, they were now subjected to all sorts of abuses by their Spanish masters who could demand any sort of labor from them, being obliged in return merely to feed, clothe and house them and pay their tribute.<sup>9</sup>

<sup>8</sup> *Ibid.*, pp. 283–311.

<sup>9</sup> Sir Clements R. Markham, *A History of Peru*, Chicago, 1892, p. 150; Juan Matienzo de Peralta (1560–1573), *Gobierno del Perú*, edited by José Nicolas Matienzo, Buenos Aires, 1910; Bernard Moses, *The Spanish Dependencies in South America*, 2 vols., New York, 1914, I. 194, 321–323. Original documents relating to Toledo's administration will be found in the following: *Relaciones de los Virreyes y Audiencias que han gobernado el Perú*, edited by Sebastián Lorente, Lima, 1867; *Documentos relativos a D. Francisco de Toledo* (originals owned by the Duke of Frias), edited by Miguel Salvá and Pedro Sainz de Baranda, Madrid,

Regarding the *yanaconas*, Matienzo says:

They live like Christians among Christians and they are better treated and cared for than they would be by their own caciques. They are better fed and have better things to drink than they would on their own lands. They are more honoured than the caciques themselves would be, which causes them great contentment. They serve public needs, which without them would remain unsatisfied, for Spaniards do not act as servitors, nor is it fitting that they should so act, and negroes are few, although it would be better if there were not even so many as there are, and so, without the service of these [*yanaconas*] for necessary duties, this land could not be preserved.<sup>10</sup>

The importance of this passage is that it reveals the manner in which a perfectly just Incaic institution was taken over by the Spaniards and, in distorted form, metamorphosed into a means of cruel oppression, for Matienzo certainly exaggerates the benevolence of the treatment meted out to the *yanaconas* as evidence presently to be adduced will indicate.

In like manner, Toledo took over the ancient Incaic post-runner service and road-house service. Though "classical" writers like Prescott tend to make Inca roads somewhat more awe-inspiring than they really were, there is but little doubt that there was a wonderfully efficacious system of pathways throughout the Inca empire, and, in conjunction with it, an efficiently organized service of *chasquis* (runners to carry messages) and of road-stations (*tambos*, anciently, *tampus*). It was due to these that the huge empire had been held together. A large number of ordinances relating to the *tambos* had been promulgated by Governor Cristóval Vaca de Castro at Cuzco in June, 1542<sup>11</sup> and these were supplemented by legislation of Toledo's day.

1848 (in "Colección de Documentos inéditos para la Historia de España", XIII. 549-566); *Revista de Archivos y Bibliotecas Nacionales* edited by Charles A. Romero and others, Lima, 1899, I. and II.; *Memorial que D. Francisco de Toledo dió al Rey nuestro Señor del Estado en que dejó las Cosas del Perú*, edited by the Marquis of Pidal and Miguel Salvá, Madrid, 1855 ("Colección de Documentos para la Historia de España", XXVI. 122-161).

<sup>10</sup> Matienzo, *ut supra*, p. 18.

<sup>11</sup> See *Revista Histórica*, Lima, 1908, III. 427-491.

In a word, and without multiplication of examples, the function of Toledo was that of establishing a governmental system which combined a major government of Spanish antecedents with a minor government of Incaic antecedents. The minor government was made up of Indian officers who acted under the *corregidor* or under some landowner, their chief function being the extraction of tribute from the mass of their own race. At first brush it might seem that the existence of Indian officials would make for a more benignant rule, but such was not the case, for the *caciques* or *curacas*, the "*caciques segunda persona*", the *piscapachaca* and the *pachaca* all combined, as a general thing, to oppress their own people as a means of distinguishing themselves from the Indian commonality. Professor Moses has said that the "old system was destroyed" by the Spaniards.<sup>12</sup> To my mind it would be better to say that it was parodied or burlesqued, and in no jocose spirit.

Take, for an example, the *mita* or corvée system which was largely the work of Toledo. The *mita* was substituted for the reasonable and probably not onerous tribute-by-service system of Inca days. There were many sorts of *mita*-service, for instance:

*Obrajes* = Cloth-factories. The least onerous sort of service for the Indians.

*Chasquis* = Post-running (see above).

*Huacas* = Forced digging for treasure in pyramids, etc.

*Minas* = Forced labor in mines.

Pearl-fishing, coca-ground tending, vineyard tending, lumber-cutting, burden-carrying, etc.<sup>13</sup>

Of course, that vague and amorphous royal benevolence, to which allusion has already been made, strove at various times to regulate and even abolish most of these forms of *mita*-service. But ignorance on the part of the court concerning conditions prevailing in Peru, and the remoteness of most of the employers of

<sup>12</sup> Moses, *ut supra*, II. 2.

<sup>13</sup> See the account of these given by Juan de Mendoza y Luna, Marquis of Montesclaros, viceroy of Peru, 1607-1615; *Memorias de los Virreyes que han gobernado el Perú*, 6 vols., edited by Manuel A. Fuentes, Lima, 1859, I. 18-30.

*mita* labor from royal authority naturally nullified the attempts to better the conditions of the Indians subject to the *mita*. One part of the *mita* as it really was is well described by Professor Moses:

Under the system of the *mita* the owners of the mines of Potosi drew into their service, earlier or later, a large part of the Indian population of the town and the surrounding country. The *mita* as here employed was a form of conscription, under which a certain number of Indians between the ages of eighteen and fifty were forced to work in the mines. Those liable to this service were arraigned in seven divisions, and each group drawn worked for six months, and were then, under the rule, free for two years. But the severity of the labor and the unfavourable conditions were such that eighty per cent, or four out of every five, died the first year. It is affirmed that under this system eight millions of Indians perished in the mines of Peru.<sup>14</sup>

Doctor Don Diego de León Pinelo, in his letter on the Indians prepared for Don Luis Henríquez de Guzmán, Count Alva de Aliste and Viceroy of Peru (1655-1661) gives a vivid and pitiful picture of the material condition of the Indians in Peru. Of the labor in the mercury mines he says:

This labor depends only upon the sweat, blood, and lives of these unfortunate men, and the most harmful [mine] is the mercury mine of Guancavelica, which has desolated nine provinces, some of the most opulent and thickly peopled of this kingdom [Peru], without [mentioning] two others which were added later; these provinces are those of Lucanas, Chumbiblicas, Padoguailas, Vilcas, Cotabambas, Guanta, Angaraes, Tarma and Xauxa, and those which were added afterward are those of Aimaraes and Parinacochas. This labor, in whatever sort of mine, is such that the laws [have to enforce it] under penalties so grave that only the capital punishment of death is greater.<sup>15</sup>

<sup>14</sup> Moses, *ut supra*, II. 7.

<sup>15</sup> Diego de León Pinelo, *Carta que tiene por título, Trabajos, Agravios, e Injusticias, que padecen los Indios del Perú, en lo Espiritual, y Temporal*, published (Madrid ?) by order of the count of Alva de Aliste (copy of this rare book exists in the Library of Congress).

If the material condition of the Indians was bad, it was not because there was any lack of effort to bring matters to the royal attention. León Pinelo's great work is one instance of this. Another is that of the Licentiate Falcón who was so bold as to say that:

It is clear that the penetration of the Spaniards into these realms [Peru] was illicit and that they had no right to conquer them, nor any cause whatever for bringing war against them.

Further, Falcón maintains that:

1. If the "lords of these realms and these realms themselves" come to such a state as to be able to rule themselves, as they will, with the aid of God, their independence should be restored by the crown.

2. All lordships and estates should soon be restored to their former [i.e., Indian] owners, provided that so doing shall not interfere with the good government and Christianity of the realms. The restored cacique might pay tribute out of the sums received from his subjects to the encomendero to whom he was vassal.

3. That the encomenderos must give up their Indians on the demand of the crown.

4. That the king ought to spend the income from these realms in securing their spiritual welfare.

5. That only enough Spaniards should receive lands to give support to the christianizing of Peru, and that only small lots of land be given, all the rest being reserved for the natives.

6. That the Spaniards ought not to pasture their cattle on Indian lands or in Indian villages. And that the Spaniards ought not to have thousands of cattle while the Indians scarcely have scores, for thus the Spaniards are at too great an advantage. Further, that all Indian customs not inherently bad should be respected, in accordance with the royal will.

7. That all those Spaniards who are outside the number of those needed to give support to the Evangel, and who are straining the resources of any given neighborhood to the damage of its Indians, must be made to leave the country. It is noted that His Majesty did make some such leave the town of Valverde in the Valley of Ica and others the town of Ribera in the Valley of Camaná.

8. That not more tribute shall be exacted from the Indians than their ancient rulers were wont to demand. Those demands, it is noted, took the form of labor only.<sup>16</sup>

The chief qualities of these propositions are justice, boldness, sagacity, and benevolence. With such qualities the government of Philip II. had little to do.

The fourth of Falcón's recommendations calls our attention to the spiritual aspects of the Indians' lot. They were hardly worse, and no better, than the material aspects. Theoretically the encomenderos were supposed to see to it that their Indians were taught the Christian religion. No less a personage than Pope Paul III. (Alessandro Farnese, pope 1534-1549) had concerned himself with the matter. He provided that:

1. The Indians should observe no other feasts during the year than: Sundays, Christmas, Resurrection Day, Advent, Circumcision, Epiphany, Ascension Day, Lady Day, Assumption Day, Corpus Christi, and the days of the Apostles Saint Peter and Saint Paul.

2. The Indians were obliged to fast only on the Fridays of Lent and the Saturday of Holy Week.

3. The Indians were permitted to marry within the third and fourth degrees.

Gregory XIII. (Ugo Buoncompagno, pope 1572-1585), Pius IV. (Giovanni Medici, pope 1559-1565), Pius V. (Michele Ghiseieri, pope 1566-1572) and Clement VIII. (Ippolito Aldoe-randini, pope 1592-1605) all made similar regulations for the spiritual salvation of the Indians.<sup>17</sup>

<sup>16</sup> Francisco Falcón, *Representación . . . sobre los Daños y Molestias que se hacen a los Indios*, edited by Horacio H. Urteaga and Carlos A. Romero ("Colección de Libros y Documentos referentes a la Historia del Perú", XI. 133-176), Lima. 1918. Falcón was a Spanish jurisconsult, 1550-1600, who made a profound study of Indian conditions in Peru. The original manuscript of his work exists in the Biblioteca Nacional, Madrid.

<sup>17</sup> See a convenient summary of the various papal bulls in Diego González Holguín, *Vocabulario de la Lengua General de todo el Perú llamada Lengua Qquichua, o del Inca*, Lima, printed by Francisco del Canto, 1608. This is the second edition, and contains the spiritual privileges conceded to the Indians.

In spite of all this august solicitude, however, the spiritual lot of the Indians was far from happy. León Pinelo found himself obliged to say:

(The Indians) do not know the Christian Doctrine, even that part of it which is necessary, *de necessitate medii*, in order to save them. And according to the judgment of certain ecclesiastics and religious who have had to do with the doctrinating and spiritual instruction of them, that portion is the fourth part of the whole. And I hold it to be certain that the number of those who are ignorant of it is greater than that of them who are not ignorant of it.

Idolatry has not been uprooted from their souls, and many of them are still stained with it, even as they were before the preaching of the Gospel entered into this kingdom.

Innumerable [Indians] die without the holy sacrament of confirmation. Of this matter I made report to your Majesty in a letter to your Royal Council of the Indies on the 15th of October, 1654, and your Majesty in a cédula of the 20th of April, 1656, which I received while I was writing the present report, deigned to acknowledge its receipt and to advise me that you were writing to the viceroy and to the archbishop of this city [Lima] in order that both, each in his sphere, should attend to these wrongs, which I have set down, gravely charging them to find a remedy. And now I represent to your Majesty the rest of the wrongs, and the causes of them, and the remedies which seem to me apt.<sup>18</sup>

These extracts serve to show the tone of León Pinelo's eloquent and merciful plea for the Indians. He supports his contentions with minute accounts of the outrages committed by the parish priests against the worldly goods and the souls of their charges. No need exists to be more explicit here.

To go further into all this now is but to involve ourselves in endless and fruitless repetition.

Concerning the state of the Indians and that of the legislation bearing upon them during the colonial period, it should be noted that, with the coming of the House of Bourbon to the throne of Spain in 1700 some slight improvement was effected. But the improvement, such as it was, lasted but a brief while, and in

<sup>18</sup> León Pinelo, *ut supra*, pp. 1, 2, and 4.

the latter part of the eighteenth century when Jorge Juan y Santacilia and Antonio de Ulloa were in Peru, conditions, especially those referring to the clergy, were as bad as ever.<sup>19</sup>

Finally, in 1780, the famous rebellion of José Gabriel Condorcanqui, better known as Tupac-Amaru II., broke out. This has been fully treated in my paper on that rebellion.<sup>20</sup>

That rebellion, which heralded the dawn of freedom from Spain's stifling rule, was but the logical outcome of a régime which Dr. Prado y Ugarteche has described thus:

Looking upon America merely as an immense territory the overlordship of which pertains to the king by divine and human law, considering it as a source of glory and pride for his crown, as an inexhaustible chest full of pecuniary resources and longed-for riches, of which the national treasury found itself in urgent need, the Spanish kings governed the Indies with the severity and energy of a power very jealous of its absolute authority, with the unbending intransigence of a man who believes that he fulfils a divine mission, with the pompous ceremonial with which the popular fancy is enthralled and human vanity satisfied, with the anxiety of a man who needs much money and can, with little effort, avail himself of a treasure, and, frequently also, with the solicitude of one who, finding himself loftily placed, turns a benevolent gaze upon those who are very lowly.<sup>21</sup>

The coming of national independence in 1821 altered very little the condition of the Indians or the attitude of the upper classes towards them.

In 1879 the wellknown Peruvian legal authority, Don Francisco Garcia-Calderón, described the situation thus:

<sup>19</sup> See Jorge Juan y Santacilia and Antonio de Ulloa, *Noticias secretas de la América*, London, 1826, pp. 239-245; Philip Ainsworth Means, "The Rebellion of Tupac-Amaru II., 1780-1781", in *THE HISPANIC AMERICAN HISTORICAL REVIEW*, II. No. 1, February, 1919, pp. 1-25.

<sup>20</sup> See above note 19. See also Bernard Moses, "The Revolt of Tupac Amaru", in *University of California Chronicle*, Berkeley, 1907, IX. 201-219; and *South America on the Eve of Emancipation*, New York, 1908, especially chapters IV-VI, VIII, and IX.

<sup>21</sup> Javier Prado y Ugarteche, "Estado social del Perú durante la Dominación Española", in *Anales Universitarios del Perú*, XXII. 1-159, Lima, 1897, pp. 10-11.

A brief study of our political condition down to the year 1821 brings the conviction that one of the causes which have tended to restrict the social, intellectual, and moral progress of the Hispanic American regions was the oppression and humiliation of the indigenes.<sup>22</sup>

Nevertheless, José de San Martín, while Protector of the Liberty of Peru, did promulgate a number of regulations with regard to the Indians. His decrees were:

1. 27 August, 1821.
  - A. Tribute is abolished.
  - B. Unpaid portions of old tribute not to be collected.
  - C. Tribute collectors to hand in their accounts.
  - D. Henceforward the aborigenes are not to be called Indians or natives. They are sons and citizens of Peru, and are to be called Peruvians.
2. 28 August, 1821.
  - A. All the old forms of service (*mita*, *encomiendas*, *yanaconazgos*, etc.) to which the Peruvians, anciently dubbed Indians or natives, were subject are abolished.
  - B. Any person, lay or clerical, who contravenes the foregoing article will be exiled.

In like manner, Simón de Bolívar y Palacios, when Dictator of Peru, made the following decrees:

1. 7 April, 1824.
  - A. State lands to be sold under certain restrictions.
  - B. The lands of the so-called Indians are not included in this article. Rather, the said Indians are declared to be proprietors of those lands so that they may sell them or otherwise alienate them.
  - C. The lands belonging to Indian communities shall be distributed among those Indians who have no land, they to be owners of those lands, and any surplus lands are to be sold in accordance with the first article.
  - D. Married Indians shall receive more land than unmarried ones.

<sup>22</sup> Francisco García-Calderón, *Diccionario de Legislación Peruana*, 2 Vols., Lima and Paris, 1879, II. 1104-1107.

- E. The distribution shall be made with due consideration of local conditions.
  - F. Those who hold lands now by renting them, by possession, or by living on them, shall have preferential opportunities to buy them.
  - G. Officials are to be named to see that all this is properly carried out.
  - H. Lands belonging to the State or to be sold by lot so that agriculture shall be stimulated, the public treasury increased and new villages founded.
2. 4 July, 1825. (Selected provisions.)
- A. Caciques who have no lands of their own shall receive for their wives and for each child a parcel of land measuring five *topos* (acres).
  - B. Every other indigene of either sex shall receive a *topo* of rich and watered land.
  - C. In sterile and waterless places they shall receive two *topos*.
  - D. The absolute possession formerly decreed is to be limited by the provision that the Indians may not alienate their lands until the year 1850.<sup>23</sup>

The next important piece of legislation was a decree given by the Peruvian Congress, Javier de Luna-Pizarro being president of it, on March 23d, 1828. This decree provided that:

- A. The Nation recognizes the so-called Indians and mestizos as unrestricted proprietors of the lands they hold.
- B. Landless Indians shall be assigned lands.
- C. Lands owned in accordance with the first article may be freely alienated provided that the owners know how to read and write.
- D. Lands left over after the assignment of lots in accordance with the second article shall be used as a fund for maintaining primary schools in the neighborhood.<sup>24</sup>

<sup>23</sup> These extracts of the laws given by San Martín and Bolívar are taken from Ricardo Bustamante Cisneros, *Condición Jurídica de las Comunidades de Indígenas en el Perú*, Lima, San Marcos University, 1919, pp. 29-34.

<sup>24</sup> Bustamante Cisneros, *ut supra*, pp. 37-38.

Sr. Bustamante Cisneros sums up the trend of Indian legislation during the Republican period. Briefly stated the matter is as follows:

The Indian question in Peru has largely revolved around the problems connected with the Indian community.

There is little doubt, or rather no doubt, but that the Indian community of today is a direct and legitimate descendant of the *ayllu* or gens of pre-Inca and Inca days. There has been a strong tendency toward breaking up the communities altogether, converting their members into individual proprietors of a just proportion of the lands formerly held in common and distributed annually by lot among the comuneros.

At its best, the Indian community is a perfectly respectable institution. Every year officers are elected, several grades of officials having each its own functions. Likewise, every year a lottery is held to determine who shall have what parcel of land. Besides those lands, there are certain other lands which are not distributed, but are held permanently in common and are dedicated to specific public purposes (pasturage, etc.). Some of the communities show a greater degree of agricultural sagacity than do some of the owners of large estates, for they rotate their crops and give the soil a chance to lie fallow and to rest for long periods. In the best communities there is a notable degree of coöperation and kindness between the members. Idle, pernicious, and useless individuals are often driven from the community.<sup>25</sup>

A number of arguments have been adduced to prove that the community is an anachronism, that it stifles individual initiative, that it prevents the land from doing its full share of work, that it is anti-republican, etc. To all such arguments the reply may be made that undoubtedly some communities are better administered than others, and that those less well run probably do have serious faults. But it is obvious that the Indian community is full of unnumbered potentialities for good.

<sup>25</sup> Some of these data are supplied by Francisco Tudela y Varela, *Socialismo Peruano*, Lima, 1905. They have also been supplemented by personal observation in a number of regions of Peru. My Majordomo, Antonio Rojas, a son of one of the chiefs of a community in the eastern part of the Department of Piura, has likewise given me most valuable information from time to time about the minutest details of community organization.

Señor Bustamante Cisneros has shown that at least thirty-five per cent of the population of Peru is dwelling in communities.<sup>26</sup> He shows that the community has a three-fold aspect:

1. Economic = Co-proprietorship, common usufruct of the products of the soil, etc.
2. Political = Internal suffrage, election of authorities who coöperate advantageously with the functionaries of the State.
3. Social = Creation of a society within and yet apart from the society of the Nation.

As Sr. Bustamante rightly says, the community constitutes one of the great problems of modern Peruvian sociology.

The chief foes of the community are those great landed proprietors who are ill disposed toward it and who, availing themselves of the difficulty with which the indigenes gain the protection of the laws, absorb its lands and make tenants of its members by either guile or violence or both. There are just enough proprietors of this sort to lend verisimilitude to the outbursts of Pedro S. Zulen and other professional agitators. Much wrong has been done by "*gamonales*" ("land-barons"), and they have committed many grave injustices against the communities and against other indigenes as well. But in spite of all that, it is very clear that the landholding class is potentially the best friend of all the indigenes, as well those of the communities as those of the tenant class.<sup>27</sup>

<sup>26</sup> Bustamante Cisneros, *ut supra*, pp. 49-51.

<sup>27</sup> The chief works on modern Peruvian sociology, in addition to those already cited, and certain works to be cited later, are the following: Victor Andrés Belaunde, *El Perú antiguo y los modernos Sociólogos*, Lima, 1908; Félix Cosío, *La Propiedad colectiva del Ayllu*, Cuzco, 1916; Luis A. Eguiguren, *Ayllu Peruano y su Condición legal*, Lima, 1914; José Manuel Osorio, *El Medio y la Legislación*, Lima, 1918; Manuel A. Quiroga, *La Evolución Jurídica de la Propiedad Rural en Puno*, Arequipa, 1915; César Antonio Ugarte, *Los Antecedentes históricos del Régimen agrario Peruano*, Lima, 1918; Luis E. Valcarcel, *La Cuestión agraria en el Cuzco*, Cuzco, 1914; Manuel V. Villaran, *Condición legal de las Comunidades de Indígenas*, Lima, 1907.

## THE PRESENT CONDITION OF THE INDIANS IN PERU

It is possible to state the matter briefly.

The Indians, the Negroes, the Mestizos (mixed Indian and white), and the other race-mixtures make up the lowest class of Peruvian society. This does not at all mean that individuals with Indian (and even with some Negro) blood may not rise to high social positions and to high political station, for they may and do. Nor does it mean that the laboring class is without a small element of white or near-white blood. It simply means that the mass of the people are Indian, with a certain proportion of other racial affinities in close association with them.<sup>28</sup>

Dr. Ulloa Sotomayor is rather harsh in his criticism of the Indians. His judgment of them appears to be an echo of that held in the middle of the last century by those would-be cotton planters who sought in the Basque provinces of Spain for labor sufficiently intelligent to grow cotton in Peru. Dr. Ulloa says:

. . . The Indian is refractory to work. His greatest happiness consists in doing nothing more than is needful for gaining a meager living, cultivating for that purpose a patch of ground which will yield him up a few fruits. And thus it is that the greater part of them do.

The Indian workman labors badly, without spirit in his work, without gaining satisfaction from a duty well done, far removed from that affection for his work which is wont to awaken in a man when his work is not repugnant to him, and without taking the slightest interest in the results of his efforts. . . .

Observations made in scores of places in Peru convince me that, though the Indian laborer is undoubtedly the victim of cruel conditions today, he is potentially a diligent, intelligent, and honest worker. In localities where he is provided with proper social conditions, the Indian, whether pure-blooded or having an admixture of negro or white blood, is as good a workman as can be found anywhere. He is profoundly susceptible to good treatment, and when he is once convinced that the master of the land on which he lives is his friend and well-wisher there is

<sup>28</sup> Alberto Ulloa Sotomayor, *La Organización social y legal del Trabajo en el Perú*, Lima, 1916, p. 3.

nothing that he will not do for that master. This contention has been proved on several estates, some owned by Peruvian individuals and others by companies, whether Peruvian or foreign.<sup>29</sup>

Yet, in addition to suffering the disadvantages of poor living conditions and the ravages of alcoholism which few try to check, the Indians are subjected to one of the most iniquitous means of recruiting labor that has ever existed.

I refer to the "*enganche*". The word means "hook" and is expressive of the way in which Indians are "hooked" and dragged into the service of some employer. The Indian, usually in an intoxicated state, is tricked into signing a contract with the agent of the employer. Then the "hooked" Indians are banded together and marched off to the new place of work. Sometimes their families go with them. Sometimes they do not. Once on the *hacienda* of the man whose agent has hooked them, they are obliged to remain there, for he maintains them in debt to him for necessary articles and the law does not permit them to escape while the debt is unpaid. Dire punishment awaits the truant. Thus he finds himself in an endless treadmill of hard work, little pay, no joys, and constant till-treatment. The *enganche* is the *mita* born anew.<sup>30</sup>

It should be said, however, that even proprietors who are perfectly good masters and who do all that they can for their workmen *once they get them* sometimes use the *enganche* simply on account of the absence of any other means of getting labor. In their case, it is much less of an abuse, and once the "hooked" Indians are on the good proprietor's land and are assured that they will be well treated, their debt is wiped off and they stay on the land of their own accord.

One of the most cheering things in relation to the Indian question in Peru is the slow but steady growth of a more sagacious and benignant attitude on the part of the great landowners toward their Indian tenants. They are beginning to see, espe-

<sup>29</sup> For further details, see Means, "Race and Society in the Andean Countries" (cf. note 1, above).

<sup>30</sup> Ulloa Sotomayor, *ut supra*, pp. 80-90.

cially the younger men among them, that the Indian is a good laborer and a good sort of person generally whenever he is permitted to be by the conditions under which he lives. By regulating liquor, by providing wholesome pastimes, by furnishing the men and their families with decent houses and accommodations for bathing, by maintaining good priests who serve as a solace and a comfort to the unhappy and not as at times, the very opposite, and, above all, by himself taking a personal interest in all the affairs of his people, the good landlord can make his Indians into a most excellent and productive and happy society.

Though it is usually assumed that there is an inevitable conflict between the landed proprietors and the Indian communities such is not necessarily the case. A well-disposed landlord who finds his lands contiguous with those of one or more communities should not try to impose any sort of overlordship upon them. Instead, he should treat them in a friendly but not officious manner and should stand ready to defend them from the aggressions of other landlords. He should treat the community as a whole with the same consideration that he would show to another individual proprietor. In a very short time, he would find at his doors a good-sized society from which he could draw volunteer laborers to help with his own crops and do other work in times of need, and, in due time, he might himself be made an honorary member of the community. Then it would depend upon his own personality what use he made of his position. He might in time induce the community as a whole to become his tenant, under special conditions, after which he could bring about any material agricultural improvements on their land that he saw fit, to their good and his. In this way, the landlord's estate would increase in size, but it would do so without injury to anyone, and the community would continue its life precisely as before, but under the expert advice of the landlord and under the security of his legal protection.

The fundamental need of Peru is the development of a really intelligent and well-disposed land-owning class. The material for it already exists. The problem is: How are the landlords who persist in the old abusive practices to be made to turn

from their evil courses and go in the right direction? Only drastic laws rigidly enforced will ever induce the older of them to do so. But the younger ones may be reached by other means. The universities should take it upon themselves to teach them all the latest ideals and methods of modern agriculture and modern rural sociology. In that way, the needed class will in time be engendered.

Meanwhile, problems of this sort are being studied with due gravity and care by leading Peruvian sociologists.

Señor José Encinas, writing in the *Revista Universitaria* of San Marcos University in Lima, contributes some very noteworthy ideas to the solution of these problems.<sup>31</sup>

A very concentrated account of what Sr. Encinas says follows:

The race-question must be solved in Peru, if that country is to progress as it should.

Raising the cultural level of the Indian will not do so, but rather will give rise to a series of vindictive struggles like those in Mexico.

Great immigration of foreigners followed by a general mixing of blood will not do anything toward achieving a final solution of the problem.

Still less can the desired end be gained by a total annihilation of the Indian, for he is a necessary factor in the economic development of the country.

The solution is not a one-sided matter. In large measure it revolves upon the legal points involved. The life of the Indian unrolls itself through a series of problems relating to the stability of his communal or individual property, to his salary as a laborer or as a worker on a landed estate, and to his relations with antagonistic social classes which surround him and perturb his natural conservatism.

The present laws of Peru, and the minor officials who execute them, far from affording to the Indian the protection he requires, constitute a veritable safeguard to those who desire to exploit and victimize him.

The condition of the Indian has changed little if any since the colonial period. He still occupies the lowest place in the social scale. His intellectual activity is very slight. Passion dominates thoughtfulness, though his physical activity controls his passion to some extent.

<sup>31</sup> José A. Encinas, "Contribución a una Legislación tutelar indígena", in *Revista Universitaria*, XV. pp. 35-143, Lima, 1920.

These factors coöperate with his utter isolation from the classes which benefit by the laws to make him excessively conservative and shy.

Today the lot of the Indian hardly differs from that of colonial times. If there is no *mita* and no *encomienda*, if there are today no exactions by Indian *curacas*, there are the demands made by governors, sub-prefects, judges, and other officials and there are such irritating things as labor on the large estates, military conscription, the *enganche* (deceiving and unfair contracts to labor which the Indian is tricked into signing), contracts which, deceitfully worded, tend to do away with Indian property entirely. For the rest, his huts, his hygiene, and his physical surroundings remain in the same state as that in which the Spaniards left them.

This social inferiority of the Indian, united with the individualism distinctive of Peruvian laws, shows clearly the need of reforms calculated to meet his needs. The reforms should be motivated by a conception of the Indian's social disabilities and not by any idea of the anthropological inferiority of his race.

The Indian suffers from a series of social factors which cause the inferiority of his race's position. He has a clear and fixed idea of what justice is, and he is at his best when fighting for his rights. But the present laws afford him very little chance to see his concept of justice realized. He has, on the contrary, but a vague idea of nationality, patriotism, and so on. He hates forced military service.

He has very little racial spirit. Any change of work which causes him to move to new surroundings and to live after the manner of some other race, is sufficient to make his own people and his former habits seem odious to him. If the social situation itself of the Indian were such that he enjoyed full legal guarantees, that he had the means for increasing his ways of gaining a livelihood, and that his labors were justly paid for, he would find no cause for finding his own people and his own old home adverse to his new conceptions of what life is.

But a show of superior force attracts the Indian and subjects him, more through fear than through convincing him that he will be better off so. He prefers, oftentimes, to be a tenant on a large landed estate to being a *comunero* in some Indian community where he is a free man and a land-holder. He renounces his property in favor of some land-magnate in order to protect himself from other land-magnates.

For his own livelihood, the products of his small truck garden (*chacra* or *chacara*) suffice. He is in constant fear of vagabondage, the prison and want, so he turns over his little farm to the great estate, and he

has little to do with the *comuneros* from whom he sprang through fear of suffering the same fate as they.

No memory of the ancient greatness of his race lingers in his mind to alleviate his wretchedness. Thus, a strong potential force for creating a healthy racial pride is lost.

Nor has he any conception of an immaterial God. His religious ideas are a jumble of surviving animistic elements combined with the outward practices of catholicism wherein the saints, or rather their effigies, are conceived of as the gods who are destined to avenge his wrongs and these patron saints of the tribes are merely a new form of tribal token.

The Indian's only bond is that to the soil, and the soil is too often the cause of lawsuits and the object of strife with landlords. The latter frequently foment trouble, knowing well that the land of orphans and of the worsted will fall to their hands.

On this basis, Sr. Encinas proceeds to trace out the abuses which the Indians suffer at the hands of some landowners so that, in certain regions, small Indian holdings have practically ceased to exist. He is opposed to the continuance of the great *latifundiums* (huge landed estates). But he is so opposed for sane reasons, not on account of a complex of hysterical prejudices and insensate envies such as that which moves Zulen. Naturally, any sane person will readily concede that the *latifundium* possesses many potentialities for harm. No one concedes this more frankly than the present writer, but for reasons shown a few pages back, it is his opinion that the *latifundium* (not necessarily the estate of colossal proportions) has at least as much good as evil latent in it.

The constructive suggestions of Sr. Encinas are of the first importance. He would see the following measures taken:

1. The establishment of a Bureau of Indian Affairs under the Ministry of Justice.
2. The foundation of an Indigenous Homestead law. This would provide for:
  - A. The distribution of State and Church lands among community Indians and others in lots of forty hectares (about 100 acres) to each family, on condition that a homestead be established thereon.

- B. Obligatory cultivation of the soil with the aid of the State.
- C. A number of other provisions contributing to the general usefulness and efficacy of the homestead law.

The next part of Sr. Encinas' argument is descriptive of the present condition of Indian labor in Peru. He points out the extraordinary aptitude of the Indians for certain sorts of work:

1. As builders. The Indians have produced many good architects. Their natural taste in aesthetic matters is exceedingly good. (I have seen, at the *hacienda* of Sojo in the Chira Valley some really fine stucco wall-decorations executed by one of the Indian officials of that estate.) But at present the Indian builders are too often abused and victimized by their employers.
2. As weavers. The ancient pre-Columbian skill of the Indians in the textile arts survives very strongly to this day. Both in the highlands and on the coast one may find recently made ponchos, saddle-bags, and other articles exquisitely made of wool or of cotton. The designs on some are entirely pre-Columbian in character; on others, Spanish influence is clearly seen.
3. As makers of various articles. The dexterity of the Indians in making shoes, hats, pottery, leather-goods, and other things is remarkable.<sup>32</sup>

Though Sr. Encinas does not mention it, another aspect of the Indian question should here be mentioned. That is the quickness with which they master even the most intricate machinery. In the middle of the last century, when the cotton and sugar industries were beginning to assume their modern character, it was assumed by the backers of those industries that the Indian would be unable to run machinery properly. Accordingly they set to work importing Basque and Chinese labor. Nothing was ever more needless. Today, on the coast, one may see Indians who are running cotton-gins, oil-presses, sugar-mills, spinning- and weaving-machinery, printing presses, gasoline tractors, and

<sup>32</sup> This same point was emphasized by the present writer in "Social Conditions in the Piura-Tumbes Region of northern Peru", in *The Scientific Monthly*, November, 1918, pp. 387-399.

other sorts of machinery with perfect success. The manager of one of the largest weaving factories in Lima told me that he could not imagine better workmen than his Indians. But even so, one finds here and there a manager who complains of them. I looked into several such complaints and found that in every case it was the manager who was to blame. He did not take the trouble to study the requirements of his workers and to give them proper working conditions. The head of a large petroleum establishment in northern Peru spent hours telling me about his experiences with Indian workers. He, like the first gentleman here mentioned, has a very high opinion of the Indians' abilities.

One more excellent recommendation of Sr. Encinas must be mentioned here. He urges the enactment of a law to protect indigenous industries and to provide:

1. That municipalities and departmental boards shall furnish the Indian communities annually with seeds, fertilizer, agricultural implements, and other necessities, in order to stimulate the tilling of the soil.
2. That prizes shall be awarded for the best industrial accomplishments of a purely indigenous character.
3. That the national budget shall provide for the erection in the various communities of indigenous industrial schools.
4. That the landowners shall be obliged to contribute to the support of the schools also.
5. That coöperative agricultural societies shall be founded among the Indians.
6. That establishments for purely indigenous manufactures shall be founded.

To conclude, I shall comment briefly on one or two points in the program enunciated by Sr. Encinas.

In the first place, it seems to me that the proposed Bureau of Indian affairs is of urgent necessity. But I think that it will never function with the greatest possible effectiveness unless it functions through the landowning class. In other words, it seems to me that a law should be enacted whereby all landowners are obliged to provide thus and so for the Indians on

their estates (the "thus and so" to include all the provisions of Sr. Encinas) and that, in the case of their failing to do so in the spirit as well as in the letter of the law, the said landowners shall be answerable to the Bureau of Indian Affairs and through it to the Nation. Such a law would do more than anything else to bring about the creation of the good landowning class which is so much needed in Peru. The obligations it would place upon the landholders would not be onerous, and the public-spirited men among them would find that the carrying out of the provisions would constitute a source of manifold interest and satisfaction.

The breaking up of the colossal Church-owned properties would be a source of great advantage to Peru. It can not, unfortunately, be said that the Church in Peru is fulfilling its mission in all respects. The act of depriving it of its great areas of under-productive land and the separation of Church and State would tend to create a better religious atmosphere in Peru. Under those conditions only men who really felt the call to serve the souls and minds of their fellows would enter the clergy, and the Church would gain immensely. The Roman Catholic Church has, potentially, a magnificent future in Peru, indeed spiritually and morally magnificent, but that future will never be realized under present conditions.

It will be noted that all the measures advocated here partake of the nature of tutelage quite as much as did the legislation of colonial days.

This is unavoidable at present and will probably remain so for two or three generations. It is so for the reason that the Indians are not yet poised and balanced intellectually. They have not yet shaken off what one may call the political inertia which they developed in Inca and in colonial times. They have not yet acquired the power to think logically and to argue constructively in political matters. Hence they must be protected by tutelary laws against their own intellectual shortcomings.

PHILIP AINSWORTH MEANS.

196 Beacon Street, Boston,  
August 8, 1920.